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No. 09-1074

Supreme Court, U.S.
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In The
Supreme Court of the United States

JOHN C. JUSTICE and MIKE WOODWARD,

Petitioners,

v.

THE TOWN OF CICERO, DENNIS DOE, JERRY JAROSZ, AND ONE TO TWO DOZEN UNKNOWN OTHER EMPLOYEES OF THE TOWN OF CICERO,
in their individual and official capacities,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Town of Cicero and Jerry Jarosz ("Respondents") object to the petition for Writ of *Certiorari* filed by John C. Justice ("Justice") and Mike Woodward ("Woodward") (Justice and Woodward, collectively "Petitioners") and respectfully request that this Court deny the same for the following reasons:

REASONS FOR DENYING THE PETITION

I. This Court Should Deny Petitioners' Petition for *Certiorari* Because Petitioners Fail to Cite to the Record and Petitioners Reference Facts Not in Evidence and/or Misstate Facts in Evidence in Violation of U.S. Supreme Court Rules 14(1)(g) and 14(4).

This case was decided by the U.S. District Court for the Northern District of Illinois (Eastern Division) on a motion to dismiss granted in favor of Defendants. [R. 81; Pet. App. pp. 29-49] The trial court denied Plaintiffs' motion to reconsider. [R. 89; Pet. App. pp. 63-64] The U.S. Court of Appeals for the Seventh Circuit affirmed the grant of Defendants' motion to dismiss [AR. 44, 45; Pet. App. pp. 117-131] and denied Plaintiffs-Appellants' motion for rehearing *en banc* [AR. 50; Pet. App. pp. 145-146] Accordingly, the only facts in evidence are those stated in the sixty-eight (68) paragraphs of the third amended complaint [R. 49; Pet. App. pp. 12-23], the subject of the motion to dismiss, and the search warrant [R. 70] of which the District Court took judicial notice [AR. 44; Pet. App. p. 119]. Nevertheless, despite the

scenario that the only facts in evidence are those set forth in Plaintiffs' third amended complaint and the search warrant, Petitioners fail to cite to the record. Rather, they reference facts not in evidence and/or misstate facts in evidence as explained in detail below.

Only once in Petitioners' Statement of the Case and twice in Petitioner's Argument section do Petitioners cite to the record. [Pet. pp. xiii, 4, 8] This is likely because there is no support in the record for many of the "facts" to which Petitioners cite. Set forth below in its entirety (except for the last paragraph which is argument) is the Statement of the Case submitted by Petitioners to this Court. *Italicized* therein are all the "facts" Petitioners rely upon that are not included in the third amended complaint or warrant, the only sources for facts in this case.

> John C. Justice and Mike Woodward are plaintiffs in an *Article III complaint* filed against the Town of Cicero and employees who *invaded Justice's building on Friday, February 24, 2006, with the intent of doing as much damage to Justice as possible. Justice had moved his business, Microcosm, Inc., to Cicero in 1976, buying a 25000 square foot building under a contract sale, the terms of which have long since been satisfied. In 1980 Justice stopped doing business under the limited liability of a corporation and became a sole proprietor doing business as Microcosm, an assumed business name as provided in the Illinois statutes to protect customers*

against fraud. At the same time he was no longer licensed by the Town of Cicero, relying on this Court's teaching regarding privileges and rights in Hale v. Henkel, 201 U.S. 43, 26 S.Ct. 370, 50 L.Ed. 652 (1906).

When employees of the Town of Cicero came to the door of his building in *January or February of 2006*, stating that Justice did not have a business license, *Justice replied that he did not need a license; that he was doing business as a matter of liberty under the Declaration of Independence and the Constitution for the United States of America. The manager of the Business License Office of the Town came and was told the same thing. Three tickets were issued and Justice responded under Special Appearance in the Town court.* [Pet. App. p. 99][1] *The manager of the Business License Office came again and was told again that Justice was doing business as a matter of liberty under the Declaration of Independence and the Constitution for the United States of America.*

The third time was a charm and a swat team descended with a swarm of inspectors, two attorneys, and half a dozen to a dozen uniformed and plain-clothed police. They

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[1] Petitioners do attach an undated special appearance purportedly filed by Micro Sol, Inc., but the same lacks foundation and context. The tickets, court date, and special appearance are not referenced in the third amended complaint and are not facts in evidence.

ordered that work be stopped, causing damage that required a day to clean up, and ordered everyone except Justice and Woodward to leave.

The police had gone upstairs and rousted Plaintiff Woodward from sleep, *seized the shotgun that was beside his bed, and brought him downstairs in handcuffs, calling him "a stupid Christian loser." Defendant Dennis Doe led Justice throughout the building pointing out items that he judged to be unsafe, accusatorially demanding Material Safety Data Sheets, and calling the Environmental Protection Agency and the Occupational Safety and health Administration to try and embroil Justice in further problems.*

The police demanded that Justice go with them to the Town Hall and get a receipt for the seized shotgun. Justice, in shock from the invasion of his property, went under duress with them and was taken out in handcuffs in view of neighboring businesses and houses, and placed in one of the line of police cars that stretched the length of the front of the building, some 150 feet.

Justice was taken to the police department and was told by the two policemen on the way, we "don't blame you for having guns; we can't be everywhere to protect you," and, "you can have all the guns you want; you just have to pay us to register them." Justice was questioned by a lieutenant or captain, who asked if he had any more guns. Justice

replied that he believed he had been told that he did not have to respond to questions. The officer immediately told the arresting police, "I want you to go back over there and tear that place apart." They went back and kept Woodward seated in a corner where he could not see them and ransacked Justice's property, seizing fourteen arms of various kinds listed on a receipt which was given to Justice when he was turned out the door twelve hours later. Woodward had been ordered to secure the building and leave after their unwarranted search and seizure was ended. He had no place to go and it was mid-winter.

The police stretched yellow crime-scene tape across the front of the building and posted signs which read, "Closed by order of the Town of Cicero."

*Justice decided that he had no choice but to apply for a license from the Town and went to the Business License Office on Monday, February 27. He asked for an application and without any exchange of information was told, "There is a fifty dollar fee for filing the application; it'll take two to three weeks to get out of [the] legal [department] . . . **IF** they let you open again at all."* Justice *perceived their strategy and drafted a complaint and* filed it on Tuesday, February 28, in the United States District Court for the Northern District of Illinois, Eastern Division, alleging violations of Constitutionally secured rights under the Court's diversity jurisdiction.

> *Justice is a resident of the State of Tennessee who has business interests in other States including the primary business which was invaded by the Town of Cicero, and Woodward is a resident of the State of Utah.*
>
> [Pet. pp. xii-xv]

Of the 832 total words in the Statement of the Case set forth above, 753 words are not supported by the facts in evidence.

Set forth below are all the factual allegations included in the Argument section submitted by Petitioners to this Court. *Italicized* therein are all the "facts" Petitioners rely upon that are not included in the third amended complaint or search warrant, the only sources for facts in this case. ***Italicized in bold*** therein are all the "facts" Petitioners alleged to have occurred during the course of this litigation that simply are not true and are not supported by a review of the relevant court dockets and pleadings.

> Justice was engaged in the use of his property and *Woodward had Justice's permission to be within the confines of his property. Secondly, Justice lost business at the time and suffered the loss of the use of his property, the loss of the continuing expenses of building utilities and real estate taxes, the moral obligation to pay workers who produce the goods which he buys, converts, and sells while the Town of Cicero had exercised its unconstitutionally unlimited powers and sealed*

his building. Woodward no longer has a place to stay and has returned to Utah. [Pet. p. 2]

FN2 *Who is to say that the 1.5-inch fingernail clipper confiscated from petitioner Justice at DFW by security when airlines began flying after 9/11 would not be considered a "dagger"?* [Pet. p. 4]

Mike Woodward's rights to privacy protected under the Ninth Amendment were violated *when police from the Town of Cicero invaded his room.* [Pet. p. 7]

Woodward and Justice were both experienced from childhood with the use of arms and both were trained by the United States Army in handling arms. We never intentionally point a weapon at anyone we do not intend to kill or injure for the obvious reason that fatal accidents can and do happen. [Pet. pp. 7-8]

Justice's assertion that he did not need a business license; that he was doing business as a matter of liberty under the Declaration of Independence and the Constitution[2] *was an assertion of a right secured under the Ninth Amendment.* [Pet. p. 8]

The attorneys who prepared the administrative search warrant addressing purported

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[2] Petitioners cite to the original complaint [R.1] for this assertion, but that original complaint was not the subject of the motion to dismiss and docs not contain the facts in evidence properly before this Court.

> *business violations did not allege any violations of firearms "laws".* [Pet. p. 10]
>
> *The warrantless and unwarranted general search and seizure conducted by the police who invaded areas not included in the administrative search warrant . . .* [Pet. p. 10]
>
> Plaintiffs' Reply Brief, filed as prescribed by rule with the requisite number of copies and a DVD containing files in .pdf format ***was never entered into the record accessible through Pacer after Plaintiffs requested that their hired counsel withdraw and they filed their own brief. Again, neither the Trial Court nor the Court of Appeals for the Seventh Circuit addressed the pleadings filed by the Plaintiffs themselves.*** [Pet. p. 11]

Of the 282 total words in the "factual" allegations asserted in the Argument section pertaining to pre-filing allegations as set forth above, 250 words are not supported by the facts in evidence. Further, the majority of the "facts" asserted by Petitioners in the Argument section set forth above that purportedly arose during the course of this litigation are not true. Specifically, after granting Plaintiffs-Appellants' motion to proceed *in propria persona* on August 25, 2008 [AR. 30, 36], after terminating the representation of Thomas M. Arnett for Plaintiffs-Appellants' on August 25, 2008 [AR. 36], the Seventh Circuit granted Plaintiffs-Appellants two (2) continuances to file their reply brief [AR. 36, 40], and received and docketed their reply brief on September 10, 2008 [AR. 41; Pet. App. pp. 65-116]. Further, in its opinion

affirming the District Court's dismissal of this case, the Seventh Circuit stated that it had "examined the briefs." [AR. 44; Pet. App. p. 117] Nothing in the Seventh Circuit's docket or opinion and order indicate that Plaintiffs-Appellants' reply brief filed on September 10, 2008 was not reviewed. Finally, nothing in the trial court's docket or final opinion and order indicate that the pleadings Justice and Woodward filed themselves were not reviewed. Indeed, the trial court judge denied Defendants' motion to strike pleadings filed by Justice and Woodward [R. 80], thus indicating that the trial judge considered them in issuing the opinion and order

Wherefore, Respondents respectfully request that this Court deny Petitioners' petition because Petitioners fail to cite to the record and Petitioners reference facts not in evidence and/or misstate facts in evidence in violation of U.S. Supreme Court Rules 14(1)(g) and 14(4).

II. This Court Should Deny Petitioners' Petition Because There Is No Compelling Reason to Grant *Certiorari* in this Case As Required by U.S. Supreme Court Rules 10 and 14(1)(h).

Pursuant to U.S. Supreme Court Rule 10, this Court will only grant a petition for *certiorari* for compelling reasons. None have been articulated by Petitioners as the same are absent in this case. Indeed, Petitioners admit they seek review because "The Court erred in dismissing Justice and Woodward's case because the Motion to Dismiss was

improper: (1) There is a genuine controversy. (2) The District Court did not construe the facts in our favor under Rule 12(b)(6). (3) If the District Court had done so, the case would not have been dismissed." [Pet. pp. xv-xvi.] These reasons are not compelling; as explicitly stated in U.S. Supreme Court Rule 10, "a petition for a writ of *certiorari* is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

As set forth in U.S. Supreme Court Rule 10, any of the following could constitute a compelling reason to grant review in this case:

(a) if the Seventh Circuit entered a decision in conflict with a decision issued by another U.S. States Court of Appeals on the same issue;

(b) if the Seventh Circuit decided an important federal question that has not but should be decided by this Court;

(c) if the Seventh Circuit departed from accepted and usual course of judicial proceedings so as to call for this Court's exercise of supervisory power.

None of these reasons are present in this case. Petitioners' Argument section is more like a merits brief than an argument articulating a compelling reason for this Court to accept this case. The District Court and the Seventh Circuit properly applied the

law of the highest court of the land to all the issues properly before them. [AR. 44; Pet. App. pp. 117-131]

Wherefore, Respondents respectfully request that this Court deny Petitioners' petition because there is no compelling reason to grant *certiorari* in this case.

III. If this Court Grants Petitioners' Petition for *Certiorari*, Four of the Five Questions Presented For Review Will Not Be Properly Before this Court.

Questions numbered three (3), four (4) and five (5) of the five (5) questions identified by Petitioners as Questions for Review were not properly presented and/or preserved at the trial court and/or appellate court level and thus these questions would not be properly before this Court if *certiorari* is granted. Questions numbered two (2) and five (5) are based on facts not in evidence and thus are improper and should not be considered in their current form by this Court.

Petitioners' question numbered three (3) asks the Court to review Petitioners' Fifth Amendment to the U.S. Constitution right to due process during this litigation. [Pet. p. i] This argument was not properly raised at the trial court level. While Justice did file an affidavit after the filing of the motion to reconsider the District Court's ruling on the motion to dismiss, wherein he states he should have been allowed to file pleadings alongside his attorney during this litigation, he did not articulate a Fifth Amendment

argument. [R. 87; Pet. App. pp. 56-57] This argument was not properly raised or preserved at the appellate level either. It was not articulated in Plaintiffs-Appellants' opening appellate brief. [AR. 15] The first time Plaintiffs-Appellants complain at the appellate level about the process afforded them in this litigation was in their appellate reply brief; yet, even then, they do not package the argument as a Fifth Amendment argument. [AR. 41; Pet. App. pp. 65-116] Accordingly, Petitioners have waived their Fifth Amendment arguments.

Petitioners' questions numbered four (4) and five (5) asks the Court to analyze Petitioners' privacy rights under the Ninth Amendment to the U.S. Constitution with respect to a municipality's right to require its citizens to be licensed in order to operate a business within its boundaries and a municipality's right to enforce an administrative search warrant. [Pet. p. i] However, these Ninth Amendment arguments were not raised in Plaintiffs' third amended complaint [R. 49; Pet. App. pp. 12-34], not mentioned in any of the briefs or pleadings on the motion to dismiss [R. 60-2, 67, 68, 69, 70] and accordingly were not discussed in the District Court's opinion and order [R. 81; Pet. App. pp. 29-49]. Finally, the Ninth Amendment arguments were not raised in Plaintiffs' motion to reconsider the District Court's opinion and order. [R. 84] Hence, the Ninth Amendment issues Petitioners' ask this Court to rule on were never before the trial court. The very first time Plaintiffs-Appellants raised these Ninth Amendment arguments

was in their reply brief on appeal with the Seventh Circuit, filed over two and one-half years after the litigation initiated. [AR. 41; Pet. App. pp. 65-116] Petitioners have waived their Ninth Amendment arguments. The trial court and the Seventh Circuit fully addressed the other constitutional issues regarding a municipality's right to require its citizens to be licensed in order to operate a business within its boundaries and a municipality's right to enforce an administrative search warrant.

As set forth in detail above, Petitioners take extensive liberties with the "facts" presented to this Court in the Statement of Facts and Argument sections of their petition. The same holds true for their Questions presented. Petitioners' Question numbered two (2) states: "Is the Fourth Amendment to the Constitution for the United States violated when the police of the Town of Cicero *invade an area that was not included in the administrative search warrants for the sole purposes of seizing articles that are not prohibited by law*?" [Pet. App. p. i] Petitioners' Question numbered five (5) states: "Is a right to privacy protected under the Ninth Amendment to the Constitution for the United Sates violated *when police invade a closed room*, wake a sleeping man by playing their pistols' laser sights on his eyes *and evict him from a building in which he was welcomed by the owner to stay and to protect*?" [Pet. App. p. i] The *italicized* portions of these questions contain facts not in evidence. Both the District Court and the Seventh Circuit fully addressed the Fourth Amendment

search and seizure arguments using the facts set forth in the record.

Wherefore, Respondents respectfully request that if the Court grants Petitioners' petition for *certiorari*, it limit the issues to those properly raised in the courts below and preserved for appeal.

CONCLUSION

Wherefore, Respondents respectfully request that this Court deny Petitioners' Petition for Writ of *Certiorari* because (A) Petitioners failed to cite to the record and instead reference facts not in evidence or misstate facts in evidence in violation of U.S. Supreme Court Rules 14(1)(g) and 14(4) and (B) there is no compelling reason to grant *certiorari* in this case. However, should this Court grant Petitioners' Petition, Respondents respectfully request that this Court limit its review to the one (1) question presented by Petitioners that is properly before this Court.

Respectfully submitted,

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